IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3452 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTILAL RANCHHODBHAI VAISHNAV

Versus

G E B

Appearance:

MR CL SONI for the Petitioner.

MR AD OZA for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/05/2002

ORAL JUDGEMENT

Rule. Mr.Dave, learned Advocate, waives service of Rule on behalf of the respondent.

The petitioner has challenged the order passed by the appellate authority, by which the appellate authority confirmed the revised bill, with some modification, and

the appeal filed by the present petitioner is partly allowed. The GEB has disconnected the electric connection on the ground that the petitioner has committed theft of electricity energy, as, on checking of the meter, some irregularities were found in the nature of breaking open the seal, some erasures of the meter, etc. The case of the Department is that the petitioner has tampered with the M.M.B. seal and that is how he committed the theft of the electricity energy. It is the say of the Board that so far as the Rojkam and laboratory report are concerned, the said irregularity is found in both the aforesaid reports. However, Mr.Soni, learned Advocate for the petitioner, has relied upon page 19, which is an extract of Rojkam, wherein it is stated that in view of the seal applied on the meter on the M.M.B. Box, it is not possible to find out the inside things. It is not in dispute that since the petitioner has not paid the revised bill, his electricity connection is already disconnected and since the petitioner was not in a position to pay 30% amount, his appeal was decided, but without any re-connection. The Appellate Authority has thereafter, partly allowed the appeal of the petitioner and has given certain benefits in counting the number of days, etc. However, reading the order of the appellate authority, I am of the opinion that even though the appellate authority has considered the arguments of both the sides as well as has also referred to Rojkam as well as the Laboratory Report, unfortunately, it has not given clear finding to the effect that the appellate authority is satisfied from the documents on record that the petitioner has committed theft. Positive finding is missing from the entire judgment of the appellate authority. Reading the entire order of the appellate authority, it is difficult to reach a conclusion that the appellate authority has really given a finding of fact, as it was required to be stated by the appellate authority whether on the available document and evidence on record the appellate authority is satisfied that the appellant has committed theft of electricity energy.

Mr.Dave has, however, submitted that the appellate authority has, in any case, considered the laboratory report and Rojkam and, therefore, it should be presumed that the appellate authority was also convinced that the petitioner has committed theft of electricity energy. In my view, especially when the appellate authority is given wide powers to decide such claims, it is the duty of the appellate authority to give its own reasoning independently and while giving reasoning, it is no doubt true for the appellate authority to rely upon the documents on which it wants to rely, but, positive

finding is required to be given whether the petitioner has committed theft of electricity or not. After considering the documents, etc., and after considering the argument, it is clear that no such specific finding is given by the appellate authority.

In view of the aforesaid, the matter is required to be remanded to the appellate authority by setting aside the impugned order. It is clarified that this Court has not expressed any opinion on the question whether any electricity theft is committed or not. It is for the appellate authority to give positive finding in its judgment and at the time of considering the matter, it is open for the appellate authority to give its own reasons and the appellate authority may consider the relevant material on record, including the Laboratory Report as well as Rojkam. The matter is remanded mainly on the ground that no positive finding is given, as indicated above, whether the petitioner has committed any theft. Accordingly, the entire order is set aside and the matter will be at large before the appellate authority. Even the order giving certain benefits is also set aside and it is for the appellate authority to examine all the points again, whether theft is committed or if it is found that theft is committed, whether any additional benefit is required to be given to the petitioner or not. It is needless to say that the aforesaid order may be passed after hearing both the sides. Since electric connection is already disconnected, the same shall remain disconnected till the authority takes appropriate decision again. Fresh decision accordingly may be taken within a period of three months from today.

In view of what is stated above, the petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent, with no order as to costs.

Direct service is permitted.

(P.B. Majmudar, J.)

***

(apj)